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6 ITG TRANSPORTATION SERVICES, INC.

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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

11 MASON AND DIXON INTERMODAL,
12 INC.,

Case No. CV-08-1232-VRW

13 Plaintiff,

**ANSWER TO LAPMASTER
INTERNATIONAL'S THIRD-PARTY
COMPLAINT**

14 v.

15 LAPMASTER INTERNATIONAL, LLC and
16 HARTFORD INSURANCE CO.,

(Jury Trial Demanded)

17 Defendants.

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HARTFORD FIRE INSURANCE CO.,
19 individually and as subrogee of Lapmaster
International, LLC,

20 Counterclaimant,

21 v.

22 MASON AND DIXON INTERMODAL,
23 INC.,

24 Counterclaimant,

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HARTFORD FIRE INSURANCE
26 COMPANY, individually and as subrogee of
Lapmaster International, LLC,

27 Third-Party Plaintiff,

28 v.

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2 ITG TRANSPORTATION SERVICES, INC.;
3 WORLD EXPRESS SHIPPING,
4 TRANSPORTATION AND FORWARDING
5 SERVICES, INC. Dba W.E.S.T.
6 FORWARDING SERVICES; DOES I
7 through X, inclusive;

8 Third-Party Defendants.

9 Third-Party Defendant ITG TRANSPORTATION SERVICES, INC. (hereinafter "ITG") by
10 and through its attorneys hereby answers the Third-Party Complaint of LAPMASTER
11 INTERNATIONAL, LLC (hereinafter "LAPMASTER") as follows:

12 **JURISDICTION AND VENUE**

13 1. Admitted in part, and denied in part. ITG admits the allegation in sentence 1 of the Third-
14 Party Complaint. It denies jurisdiction over State law claims as against ITG and others to the extent
15 these claims are pre-empted by Federal law, and to the extent that there is not complete diversity in
16 this case..

17 2. Admitted in part. ITG admits that the equipment arrived in Oakland, but lacks sufficient
18 knowledge to determine whether damage occurred to the machines, and whether the damage occurred
19 in this district.

20 3. Admitted in part, and denied in part. ITG admits that the equipment arrived in Oakland, but
21 lacks sufficient knowledge to determine whether an interchange of equipment occurred.

22 **PARTIES**

23 4. ITG has insufficient knowledge to admit or deny the allegation of paragraph 4 of the Third-
24 Party Complaint, and as a matter of law, they are denied.

25 5. Admitted.

26 6. ITG has insufficient knowledge to admit or deny the allegation of paragraph 6 of the Third-
27 Party Complaint, and as a matter of law, they are denied.

28 7. ITG has insufficient knowledge to admit or deny the allegation of paragraph 7 of the Third-
Party Complaint, and as a matter of law, they are denied.

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1 8. To the extent that the Third-Party Plaintiff alleges that this Third-Party Defendant has
 2 agents, employees, joint venturers, or partners acting in the course and scope of such relationships,
 3 such allegations are denied.

4 **GENERAL ALLEGATIONS**

5 9. ITG has insufficient knowledge to admit or deny the allegation of paragraph 9 of the Third-
 6 Party Complaint, and as a matter of law, they are denied.

7 10. ITG has insufficient knowledge to admit or deny the allegation of paragraph 10 of the
 8 Third-Party Complaint, and as a matter of law, they are denied.

9 11. ITG has insufficient knowledge to admit or deny the allegation of paragraph 11 of the
 10 Third-Party Complaint, and as a matter of law, they are denied.

11 12. ITG has insufficient knowledge to admit or deny the allegation of paragraph 12 of the
 12 Third-Party Complaint, and as a matter of law, they are denied.

13 13. Admitted.

14 14. Denied. Exhibit "A" is a document which speaks for itself, and ITG has insufficient
 15 knowledge regarding the intent of the signatories to Exhibit "A" to either admit or deny the
 16 allegations.

17 15. Admitted in part, and denied in part. ITG has insufficient knowledge to admit or deny that
 18 Exhibit "B" is a true and correct and complete copy of the Import Dispatch. Therefore, by operation
 19 of law, this allegation is denied.

20 16. This paragraph contains legal conclusions to which no response is required. To the extent
 21 that paragraph 16 contains factual allegations, ITG lacks sufficient knowledge to either admit or deny
 22 said allegations. By operation of law, these allegations are denied at this time.

23 17. This paragraph contains legal conclusions to which no response is required. To the extent
 24 that paragraph 16 contains factual allegations, ITG lacks sufficient knowledge to either admit or deny
 25 said allegations. By operation of law, these allegations are denied at this time.

26 18. ITG has insufficient knowledge to admit or deny the allegation of paragraph 18 of Third-
 27 Party Complaint, and as a matter of law, they are denied.

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1 19. ITG has insufficient knowledge to admit or deny the allegation of paragraph 18 of Third-
2 Party Complaint, and as a matter of law, they are denied.

3 20. This paragraph contains legal conclusions, to which no response is required. To the extent
4 that paragraph 20 contains factual allegations, ITG lacks sufficient information to either admit or deny
5 said allegations. By operation of law, these allegations are denied at this time.

6 21. This paragraph contains legal conclusions, to which no response is required. To the extent
7 that paragraph 21 contains factual allegations, ITG lacks sufficient information to either admit or deny
8 said allegations. By operation of law, these allegations are denied at this time.

9 22. This paragraph contains legal conclusions, to which no response is required. To the extent
10 that paragraph 22 contains factual allegations, ITG lacks sufficient information to either admit or deny
11 said allegations. By operation of law, these allegations are denied at this time.

12 **FIRST CAUSE OF ACTION**
13 **(Declaratory Relief)**

14 23. ITG incorporates by reference the foregoing paragraphs of this answer as if set forth in
15 full, in response to each allegations made which is incorporated in this paragraph of the Third-Party
16 Complaint.

17 24. This paragraph contains legal conclusions, to which no response is required. To the extent
18 that paragraph 24 contains factual allegations, ITG lacks sufficient information to either admit or deny
19 said allegations. By operation of law, these allegations are denied at this time.

20 25. This paragraph contains legal conclusions, to which no response is required. To the extent
21 that paragraph 25 contains factual allegations, ITG lacks sufficient information to either admit or deny
22 said allegations. By operation of law, these allegations are denied at this time.

23 26. This paragraph contains legal conclusions, to which no response is required. To the extent
24 that paragraph 26 contains factual allegations, ITG lacks sufficient information to either admit or deny
25 said allegations. By operation of law, these allegations are denied at this time.

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SECOND CAUSE OF ACTION
(Breach of Contract)

27. ITG incorporates by reference the foregoing paragraphs of this answer as if set forth in full, in response to each allegations made which is incorporated in this paragraph of the Third-Party Complaint.

28. Admitted in part, and denied in part. ITG admits that it contracted with MASON AND DIXON INTERMODAL, INC. (hereinafter "MDII") to transport items carefully, safely and properly from the Port of Oakland to Fremont, California. All other factual allegations are denied.

29. Paragraph 29 contains conclusions of law, to which no response is required. To the extent that paragraph 29 contains factual allegations, they are denied.

30. Denied.

31. Denied.

32. Paragraph 32 contains conclusions of law, to which no response is required. To the extent that paragraph 32 contains factual allegations, they are denied.

33. Paragraph 33 contains conclusions of law, to which no response is required. To the extent that paragraph 33 contains factual allegations, they are denied.

34. Paragraph 34 contains conclusions of law, to which no response is required. To the extent that paragraph 34 contains factual allegations, they are denied.

35. Paragraph 35 contains conclusions of law, to which no response is required. To the extent that paragraph 35 contains factual allegations, they are denied.

36. Paragraph 36 contains conclusions of law, to which no response is required. To the extent that paragraph 36 contains factual allegations, they are denied.

THIRD CAUSE OF ACTION
(Implied Indemnity)

37. ITG incorporates by reference the foregoing paragraphs of this answer as if set forth in full, in response to each allegations made which is incorporated in this paragraph of the Third-Party Complaint.

38. Paragraph 38 contains conclusions of law, to which no response is required. To the extent that paragraph 38 contains factual allegations, they are denied.

FOURTH CAUSE OF ACTION
(Negligence)

39. ITG incorporates by reference the foregoing paragraphs of this answer as if set forth in full, in response to each allegations made which is incorporated in this paragraph of the Third-Party Complaint.

40. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 40 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

41. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 41 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

42. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 42 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

43. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 43 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

44. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 44 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

45. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 45 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

46. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 46 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

47. This paragraph contains legal conclusions, to which no response is required. To the extent that paragraph 47 contains factual allegations, ITG lacks sufficient information to either admit or deny said allegations. By operation of law, these allegations are denied at this time.

1 48. This paragraph contains legal conclusions, to which no response is required. To the extent
 2 that paragraph 48 contains factual allegations, ITG lacks sufficient information to either admit or deny
 3 said allegations. By operation of law, these allegations are denied at this time.

4 49. This paragraph contains legal conclusions, to which no response is required. To the extent
 5 that paragraph 49 contains factual allegations, ITG lacks sufficient information to either admit or deny
 6 said allegations. By operation of law, these allegations are denied at this time.

7 **FIFTH CAUSE OF ACTION**
 8 **(Negligent Interference with Prospective Economic Advantage against**
 9 **All Third-Party Defendants)**

10 50. ITG incorporates by reference the foregoing paragraphs of this answer as if set forth in
 11 full, in response to each allegations made which is incorporated in this paragraph of the Third-Party
 12 Complaint.

13 51. This paragraph contains legal conclusions, to which no response is required. To the extent
 14 that paragraph 51 contains factual allegations, ITG lacks sufficient information to either admit or deny
 15 said allegations. By operation of law, these allegations are denied at this time.

16 52. This paragraph contains legal conclusions, to which no response is required. To the extent
 17 that paragraph 52 contains factual allegations, ITG lacks sufficient information to either admit or deny
 18 said allegations. By operation of law, these allegations are denied at this time.

19 53. This paragraph contains legal conclusions, to which no response is required. To the extent
 20 that paragraph 53 contains factual allegations, ITG lacks sufficient information to either admit or deny
 21 said allegations. By operation of law, these allegations are denied at this time.

22 WHEREFORE, ITG prays for dismissal of the Third-Party Complaint and entry of Judgment
 23 against Third-Party Plaintiff HARTFORD.

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DEMAND FOR JURY TRIAL ON THIRD-PARTY CLAIMS

ITG hereby demands a jury trial on all Third-Party Claims for which jury trial is allowed by law.

Dated: June _____, 2008

RYAN & LIFTER
A Professional Corporation

By
MICHAEL J. DALEY
Attorneys for Third-Party Defendant
ITG TRANSPORTATION SERVICES, INC.

PROOF OF SERVICE

I, KAREN GILBERT, declare that I am over the age of 18 years and not a party to the within action; that my business address is 2010 Crow Canyon Place, Suite 330, San Ramon, California 94583-1344; and that on this date I served a true copy of the foregoing document(s) entitled:

ANSWER TO LAPMASTER INTERNATIONAL'S THIRD-PARTY COMPLAINT

on all parties in this action by:

_____ (By Overnight Courier) I caused each envelope, with postage fully prepaid, to be sent by _____.

_____ (By Mail) I caused each envelope with postage fully prepaid to be placed for collection and mailing following the ordinary business practices of Ryan & Lifter.

_____ (By Hand) I caused each envelope to be delivered by hand to the offices listed above.

_____ (By Facsimile) I caused each document to be sent by Automatic Telecopier to the number as indicated above.

_____ (By E-Mail) I caused each document to be sent by E-Mail to the E-Mail address as indicated above.

 X (By Electronic Transfer) I caused the above document to be served through CM/ECF addressed to all parties appearing on the electronic service list on the date executed below. The file transmission was reported as complete and a copy of the file & serve filing receipt" page will be maintained with the original document(s) in our office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June _____, 2008 in San Ramon, California.

KAREN GILBERT